

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

KENNETH BARTH, §
§
Plaintiff, §
§
v. § CAUSE NO. 1:20-cv-00922
§
LEVADATA, INC., §
§
Defendant. §

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1332(a)(1), 1441 and 1446, Defendant, by and through the undersigned counsel, notifies this Court that it is removing the above-captioned action currently pending in the 98th Judicial District Court of Travis County, Texas to the United States District Court for the Western District of Texas, Austin Division. In support of this Notice of Removal, Defendant states as follows:

1. Plaintiff filed his Original Petition ("Original Petition") against Defendant in the 98th Judicial District Court of Travis County, Texas on July 8, 2020, in a civil action entitled, *Kenneth Barth v. Levadata, Inc.*, Cause No. D-1-GN-20-003532 (the "State Court Action"), alleging discrimination based on disability, age, race, and color. *See* Original Petition at ¶¶ 39-64. Plaintiff is a citizen of the state of Texas. *See* Original Petition at ¶ 3. Defendant maintains its principal place of business in California. *See* Original Petition at ¶ 8. Defendant is incorporated in the state of Delaware. Defendant is therefore not a citizen of Texas for purposes of diversity jurisdiction. Plaintiff is seeking monetary relief in an amount more than \$75,000. *See* Original Petition at ¶ 2. Plaintiff effected service of the Original Petition on Defendant through the Secretary of State for the State of Texas on or about August 10, 2020.

2. Plaintiff's Original Petition can be removed under 28 U.S.C. §§ 1331, 1332(a)(1) and 1441. Defendant may file a notice of removal within thirty days of service of Plaintiff's Original Petition. 28 U.S.C. § 1446(b)(3). This Notice of Removal is filed with this Court within thirty days of service of the Original Petition as required by 28 U.S.C. § 1446(b)(3).

3. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 because this is a civil action arising under the Constitution and laws of the United States. Plaintiff's Original Petition alleges causes of action under the Americans with Disabilities Act, 42 U.S.C. 12101, et seq., the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34, and 42 U.S.C. § 1981. *See* Original Petition at ¶¶ 39-64.

4. Plaintiff's Original Petition may also be removed under 28 U.S.C. § 1332. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332 (a)(1) because the matter in controversy exceeds the sum of \$75,000, exclusive of interests and costs, and the parties are citizens of different states. Plaintiff is a citizen of the state of Texas. *See* Original Petition at ¶ 3. Defendant has its principal place of business in California. *See* Original Petition at ¶ 8. Defendant is incorporated in the state of Delaware. Plaintiff is seeking monetary relief in an amount more than \$75,000. *See* Original Petition at ¶ 2.

5. Pursuant to 28 U.S.C. § 1446(a), Defendant files herein a true and correct copy of all processes, docket sheets, pleadings, and orders served upon this Defendant in the State Court Action.

6. All defendants who have been properly served consent to the removal of this case to federal court.

7. In accordance with 28 U.S.C. § 1446(d), Defendant is promptly filing a copy of this Notice of Removal with the Clerk of the 98th Judicial District Court of Travis County, Texas. In

accordance with 28 U.S.C. § 1446(d), Defendant is giving written notice to Plaintiff by promptly serving this Notice of Removal.

8. Pursuant to 28 U.S.C. § 1441, Defendant seeks to remove this case to the United States District Court for the Western District of Texas, Austin Division, which is the District Court located in the federal district and division where the State Court Action is pending.

WHEREFORE, Defendant respectfully requests that the above-captioned action now pending in the 98th Judicial District Court of Travis County, Texas be removed to the United States District Court for the Western District of Texas, Austin Division, and that said Court assume jurisdiction of this action and enter such other and further orders as may be necessary to accomplish the requested removal.

Respectfully submitted,

/s/ Kristin L. Bauer
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2020 a true and correct copy of the foregoing document was electronically filed with the clerk for the U.S. District Court, Western District of Texas, using the ECF system of the court, and that the foregoing document was delivered to the following counsel of record via email:

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/s/ Kristin L. Bauer

Kristin L. Bauer